

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

LEXINGTON INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:11-cv-00040-CEJ
)	
S&N DISPLAY FIREWORKS, INC., et al.,)	
)	
Defendants.)	

ANSWER AND COUNTERCLAIM

COME NOW Defendants Dorothy Poley and Joyce Poley, by counsel, and for their Answer to Plaintiff's Complaint for Declaratory Judgment state as follows:

1. Admit.
2. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 2, and therefore deny the same.
3. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 3, and therefore deny the same.
4. Admit.
5. Admit.
6. Admit.
7. Admit.
8. Defendants admit that jurisdiction is proper in this Court. Defendants deny the remaining allegations contained in Paragraph 8.

9. Defendants admit that they filed a lawsuit in the Circuit Court of New Madrid County, Missouri relating to the wrongful death of Bill Poley on July 4, 2008. Defendants deny that the suit is still pending.

10. Admit.

11. Admit.

12. Admit.

13. Admit.

14. Defendants admit that the Petition alleged that the Chamber solicited volunteers to assist with the fireworks display. Defendants deny the remaining allegations contained in Paragraph 14.

15. Admit.

16. Admit.

17. Admit.

18. Admit.

19. Admit.

20. Admit.

21. Admit.

22. Admit.

23. Admit.

24. Defendants admit that Plaintiff has accurately quoted a portion of Policy No. 6990350 and deny all other allegations contained in Paragraph 24.

25. Defendants admit that Plaintiff has accurately quoted a portion of Policy No. 6990350 and deny all other allegations contained in Paragraph 25.

26. Defendants admit that Plaintiff has accurately quoted a portion of Policy No. 6990350 and deny all other allegations contained in Paragraph 26.

27. Defendants admit that Plaintiff has accurately quoted a portion of Policy No. 6990350 and deny all other allegations contained in Paragraph 27.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Admit.

38. Admit.

39. Paragraph 39 states a legal conclusion to which no response is required.

WHEREFORE, Defendants Dorothy Poley and Joyce Poley respectfully request that this Court dismiss Plaintiff's Complaint for Declaratory Judgment, for their costs incurred herein, and for such other and further relief as this Court deems just and proper.

COUNTERCLAIM

COME NOW Defendants/Counterclaimants Dorothy Poley and Joyce Poley, by counsel, and for their cause of action against Plaintiffs/Counter-Defendant state as follows:

1. Dorothy Poley is the surviving mother of Bill Poley, deceased. Dorothy Poley is a citizen and resident of the state of Missouri.

2. Joyce Poley is the surviving spouse of Bill Poley, deceased. Joyce Poley is a citizen and resident of the state of Missouri.

3. Lexington Insurance Company (“Lexington”) is a Delaware corporation doing business in the state of Missouri.

4. Venue and jurisdiction are proper herein.

5. Lexington issued a commercial general liability insurance policy, No. 6990350, to S&N Display Fireworks, Inc., with a policy period of December 19, 2007 to December 19, 2008 (the “Lexington Policy”).

6. The New Madrid Chamber of Commerce (“Chamber”) was named as an additional insured on the Lexington Policy.

7. The Lexington Policy included coverage for bodily injury.

8. On July 4, 2008, the Chamber hosted a fireworks display in New Madrid, Missouri.

9. During the fireworks display, Bill Poley was struck by a mortar, causing his death.

10. Dorothy Poley and Joyce Poley initiated an action against the Chamber of Commerce in the Circuit Court of New Madrid, Missouri, case number 08NM-CV00555. The particulars of the case are more specifically stated in the pleadings therein, but generally alleged negligence by the Chamber.

11. Upon information and belief, Lexington was requested to and given the opportunity to defend and indemnify the Chamber in Cause No. 08NM-CV00555.

12. On August 7, 2009, Lexington sent a letter to the Chamber advising that it would provide a defense and insurance coverage to the Chamber for the lawsuit. See **Exhibit A**.

13. Thereafter, Lexington attempted to refuse its duty to defend the underlying lawsuit, taking no further action with respect to the underlying lawsuit.

14. As a result of Lexington's refusal to defend the underlying lawsuit, having first agreed to assume such defense, Defendants negotiated a Section 537.065 agreement and tried the case to the Circuit Court.

15. On March 18, 2011, the Circuit Court of New Madrid County, Missouri made a judgment for Dorothy Poley and Joyce Poley in the amount of \$2,685,683.00. See **Exhibit B**.

16. Pursuant to Section 379.200 of the Revised Statutes of Missouri, Defendants/Counterclaimants bring this action in equity for an order and judgment against Lexington to satisfy the aforementioned judgment up to Lexington's limits of insurance.

WHEREFORE, Defendants/Counterclaimants pray for judgment against Lexington in the amount of its limits of insurance, for their costs and attorney's fees, and such other and further relief as the Court deems just and proper.

Respectfully submitted,

THE LIMBAUGH FIRM

/s/ John W. Grimm

John W. Grimm E.D., #34834MO
Curtis O. Poore E.D., #38067MO
P.O. Box 1150
Cape Girardeau, MO 63702-1150
Telephone: (573) 335-3316
Facsimile: (573) 335-1369
Email: jgrimm@limbaughlaw.com
curt@limbaughlaw.com

**ATTORNEYS FOR DEFENDANTS
DOROTHY POLEY and JOYCE POLEY**

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2011, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all attorneys of record, and was mailed by United States Postal Service to the following non-participants in Electronic Case Filing:

New Madrid Chamber of Commerce
Attn: Christina McWaters
P.O. Box 96
New Madrid, MO 63869

Mr. Reagan Baird
715 Mitchell Ave.
New Madrid, MO 63869

555 Saint Joseph Dr.
New Madrid, MO 63869

S&N Display Fireworks, Inc.
c/o Mary Denise, Reg. Agent
P.O. Box 823
Lincoln, IL 62656

/s/ John W. Grimm
Attorney for Defendants